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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/520,133	03/07/2000	Yudhveer S. Bagga	1-1-1-1-1-1-1-3-1	1350

7590 03/01/2005  
Joseph B Ryan  
Ryan & Mason & LEWIS, LLP  
90 Forest Avenue  
Locust Valley, NY 11560

EXAMINER

BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/520,133

Applicant(s)

BAGGA ET AL.

Examiner

Alina N Boutah

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2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 20 December 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see office action attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-19.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This Action is in response to Applicant's Request for reconsideration filed December 20, 2004. Claims 1-19 are pending in the present application.

### ***Response to Arguments***

Applicant's arguments filed December 20, 2004 have been fully considered but they are not persuasive.

Applicant argues that Weber fails to teach or suggest "an inter-domain manager comprising a logical tree manager, with the logical tree manager being operative to manage a transport service and facility hierarchy associated with a multi-layer network, and to maintain corresponding parent-child relationships in one or more structures that reference domains containing real-time network details associated with the transport service and facility, as recited in claim 1." The Patent Office respectfully submits that this feature is being taught in figures 2 and 3, abstract, col. 4, lines 4-16, and col. 5, lines 43-51 of the Weber reference. Specifically, the cited area of the reference teaches a multilayer service management system that manages a transport service (abstract; figures 2 and 3), and maintains hierarchy relationships between domains containing network details (figure 2). Although it does not explicitly disclose "parent-child" relationships, by definition of "hierarchy," it is strongly implied that each domain is subordinate to the one above it, which in this case is interpreted as being similar to parent-child. Therefore Weber does teach the claimed limitation.

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100